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DEPARTMENT OF EDUCATION

[Docket No. ED-2013-OSERS-015]

Request for Information on the Use of Results Data in Making Determinations under Sections 616(d)(2) and 642 of the Individuals with Disabilities Education Act (IDEA)

AGENCY: Office of Special Education and Rehabilitative Services, U.S. Department of Education

ACTION: Request for Information.

SUMMARY: The U.S. Department of Education (Department) is requesting stakeholder input on how best to use results data (e.g., performance on assessments, graduation rates, and early childhood outcomes) in its accountability system under the IDEA. We believe that the Department must provide greater support to States' efforts to improve results for infants, toddlers, children and youth with disabilities (children with disabilities). We need to ensure that States focus not only on complying with provisions of the law, but also on improving results for children with disabilities.

DATES: Responses must be received by [INSERT DATE 30 days FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via U.S. mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID and the term "IDEA Determinations including Results" at the top of your comments.

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to this site?"

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments, address them to Larry Ringer, Attention: IDEA Determinations RFI, U.S.

Department of Education, 400 Maryland Avenue SW., room 4032, Potomac Center Plaza, Washington, D.C. 20202-2600.

Privacy Note: The Department's policy is to make all comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery) available for public viewing in their entirety on

the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov).

Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

Submission of Proprietary Information: Given the subject matter, some comments may include proprietary information as it relates to confidential commercial information. The Freedom of Information Act defines "confidential commercial information" as information the disclosure of which could reasonably be expected to cause substantial competitive harm. You may wish to request that we not disclose what you regard as confidential commercial information.

To assist us in making a determination on your request, we encourage you to identify any specific information in your comments that you consider confidential commercial information. Please list the information by page and paragraph numbers.

This Request for Information (RFI) is issued solely for information and planning purposes and is not a request for proposals (RFP), a notice inviting applications (NIA), or a promise to issue an RFP or NIA. This RFI does not commit the Department to contract for any supply or service whatsoever. Further, the Department is not now seeking

proposals and will not accept unsolicited proposals. The Department will not pay for any information or administrative costs that you may incur in responding to this RFI.

If you do not respond to this RFI, you may still apply for future contracts and grants. The Department posts RFPs on the Federal Business Opportunities Web site ([www.fbo.gov](http://www.fbo.gov)). The Department announces grant competitions in the Federal Register ([www.gpo.gov/fdsys](http://www.gpo.gov/fdsys)). It is your responsibility to monitor these sites to determine whether the Department issues an RFP or NIA after considering the information received in response to this RFI.

The documents and information submitted in response to this RFI become the property of the U.S. Government and will not be returned.

FOR FURTHER INFORMATION CONTACT: Larry Ringer, U.S. Department of Education, 400 Maryland Avenue SW., room 4032, Potomac Center Plaza, Washington, D.C. 20202-2600. Telephone: (202) 245-7496.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Background:

In the 2004 reauthorization of the IDEA, Congress recognized the importance of focusing on positive educational and early intervention outcomes for children with disabilities. IDEA requires the primary focus of Federal and State monitoring to be on: (1) improving educational results and functional outcomes for all children with disabilities covered under the IDEA; and (2) ensuring that States meet the program requirements. In particular, Congress placed an emphasis on those requirements that are most closely related to improving educational and early intervention results for eligible children with disabilities.

To date, however, the Department's primary focus of monitoring has been on States' compliance with substantive and procedural requirements and whether States showed improvement in the compliance data reported in their State Performance Plan/Annual Performance Reports (SPP/APRs). Unfortunately, we have not seen significant improvement in results for children with disabilities, e.g., performance on assessment, graduation rate, and early childhood

outcomes.<sup>1</sup> In order to improve results for children with disabilities, we need to balance the focus of our accountability system on both ensuring compliance and improving results for children with disabilities, consistent with the IDEA mandates described above.

To achieve this balance, the Department, through the Office of Special Education Programs (OSEP), a component of the Office of Special Education and Rehabilitative Services (OSERS), is reconceptualizing its IDEA accountability system. This reconceptualized system, Results Driven Accountability (RDA), will support States in improving results for children with disabilities, while continuing to assist States in ensuring compliance with the IDEA's requirements.

In redesigning its accountability system, OSEP is using the following core principles:

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<sup>1</sup> The SPPs/APRs for Part B and Part C include both compliance and results indicators. For Part B, the results indicators address graduation rates, drop-out rates, statewide assessment (percentage of districts meeting adequate yearly progress or annual measurable objectives for the disability subgroup, participation in assessments, and proficiency on assessments), significant discrepancy in suspension/expulsion rates, educational environments for school-aged and preschool, early childhood outcomes, parent participation, post-school outcomes, resolution sessions, and mediation. For Part C, the results indicators include service settings, early childhood outcomes, family outcomes, percentage of infants and toddlers receiving Part C services, resolution sessions, and mediation.

1. The RDA system is being developed in partnership with our stakeholders.

2. The RDA system is transparent and understandable to States and the general public, especially individuals with disabilities and their families.

3. The RDA system drives improved outcomes for all children and youth with disabilities regardless of their age, disability, race/ethnicity, language, gender, socioeconomic status, or location.

4. The RDA system ensures the protection of the individual rights of each child or youth with a disability and their families, regardless of his/her age, disability, race/ethnicity, language, gender, socioeconomic status, or location.

5. The RDA system includes differentiated incentives, supports, and interventions based on each State's unique strengths, progress, challenges, and needs.

6. The RDA system encourages States to direct their resources to where they can have the greatest positive impact on outcomes and the protection of individual rights for all children and youth with disabilities, while minimizing State burden and duplication of effort.

7. The RDA system is responsive to the needs and expectations of the ultimate consumers (i.e., children and youth with disabilities and their families).

OSEP will implement the RDA in accordance with the IDEA requirements. OSEP's design for the RDA system includes three major components: (1) the State Performance Plan (SPP)/Annual Performance Report (APR); (2) annual State determinations; and (3) differentiated monitoring and support.

As part of the first component, each State has, since 2005, had in place an SPP for IDEA Part B and an SPP for IDEA Part C, establishing measurable and rigorous targets for indicators under statutory priority areas, and those indicators include both compliance indicators and results indicators. Each State submits annually to the Secretary an APR for IDEA Part B and an APR for IDEA Part C, reporting on the State's progress in meeting those targets. On April 15, 2013, the Department published in the Federal Register two separate information collection notices proposing changes to the IDEA Part B and the IDEA Part C SPP/APR for the period of Federal Fiscal Year (FFY) 2013 through FFY 2018 (78 FR 22251 and 78 FR 22253, available at: [www.gpo.gov/fdsys/pkg/FR-2013-04-15/pdf/2013-08703.pdf](http://www.gpo.gov/fdsys/pkg/FR-2013-04-15/pdf/2013-08703.pdf)



and [www.gpo.gov/fdsys/pkg/FR-2013-04-15/pdf/2013-08705.pdf](http://www.gpo.gov/fdsys/pkg/FR-2013-04-15/pdf/2013-08705.pdf), respectively.

In those notices, the Department proposed eliminating unnecessary reporting requirements, including the requirement that States report on improvement activities for each indicator. Instead, the Department proposed to include a new qualitative indicator, the State Systemic Improvement Plan (SSIP) in each State's SPP/APR for IDEA Part B and SPP/APR for IDEA Part C. This comprehensive improvement plan would include an analysis of relevant data and a plan, based on that data analysis, to focus on improving a State-selected educational or early intervention outcomes for children with disabilities in a way that is aligned with a State's efforts to improve outcomes for all children. In working to finalize the IDEA Part B and Part C SPP/APR information collections, the Department has considered all of the comments received.

The second component of RDA is the annual State determination process. The Secretary has, since 2007, made annual State determinations based on information provided by a State in its SPP/APR, information obtained through monitoring visits, and any other publicly available information. The Secretary will continue, as required by

IDEA, to make annual determinations; however, the Department is, as part of RDA, in the process of changing how it makes determinations to provide a greater focus on results. As required by the IDEA, in making determinations, the Secretary finds that a State, for IDEA Part B and for IDEA Part C:

1. Meets the requirements and purposes of the IDEA;
2. Needs assistance in implementing the requirements of the IDEA ("needs assistance");
3. Needs intervention in implementing the requirements of the IDEA ("needs intervention"); or
4. Needs substantial intervention in implementing the requirements of the IDEA ("needs substantial intervention").

When a State is determined to be in "needs assistance" for two or more consecutive years, "needs intervention" for three or more consecutive years, or "needs substantial intervention", the Secretary takes enforcement action and has discretion to determine the specific type of enforcement action(s) to take.

Consistent with our authority in sections 616(d)(2) and 642 of the IDEA, in 2013, OSEP began redesigning the annual determinations process. In calendar year 2007 (the

first year that the Department made determinations under the IDEA) through calendar year 2013, the Department primarily based its determinations on data provided in response to compliance indicators.<sup>2</sup>

In 2013, OSEP continued to make determinations based on compliance data, but for the first time used a Compliance Matrix that provided a better accounting of the totality of the State's compliance data. The Compliance Matrix utilizes a score, ranging from zero to two points, for each of the compliance indicators and for several other factors related to compliance (see "How the Department Made Determinations" at <http://www2.ed.gov/fund/data/report/idea/sppapr.html>).

Using the cumulative possible number of points as the denominator, and using the actual points the State received in the scoring under these factors as the numerator, the Compliance Matrix reflected a percentage score that the

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<sup>2</sup> These compliance indicators include, for IDEA Part B: noncompliance related to suspension and expulsion, disproportionate representation of racial and ethnic groups in special education and related services, and in specific disability categories, that is the result of inappropriate identification, timely initial evaluations, timely transition from IDEA Part C to IDEA Part B, secondary transition requirements, and timely correction of noncompliance. For Part C, they include: timely initiation of early intervention services, timely evaluation, assessment and individualized family service plan meetings, timely transitions from Part C, and timely correction of noncompliance.

Department used to make each State's 2013 determination. OSEP made this revision to ensure that, unlike the determinations made in prior years, a State would not be determined to "need intervention" based solely on low performance under, or the lack of valid and reliable data for, a single IDEA indicator. As noted above, this approach took into account the totality of a State's compliance and provided transparency about how we reached each State's determination. We recognize, however, that while this matrix approach was an improvement in the determinations process, we also need to include results data as a significant part of the determinations process.

For 2014, OSEP will, consistent with our authority in sections 616(d)(2) and 642 of the IDEA, include a Results Matrix, similar, and in addition, to the Compliance Matrix, to focus on both compliance and results data in the annual determination process. Relevant data reported by States and other publicly available data will be reflected in the matrices, with each data element receiving a score between zero and two and then combining all of the points from both matrices. Using the cumulative possible number of points from both matrices as the denominator, and using the total number of actual points the State received in the scoring

under the individual factors as the numerator, the State's 2014 determination will be based on the percentage score from both matrices.

OSEP will take enforcement actions under Part B and Part C of the IDEA based on those underlying compliance data, results data, or a combination of the two. However, in the first two years of using results data in determinations, OSEP does not plan to take enforcement action based on results data under either IDEA Part B or C that would have fiscal consequences for a State. (While the Department must take one of the statutorily-specified enforcement actions with States that are "Needs Assistance" for two or more consecutive years, or "Needs Intervention" for three or more consecutive years, the Department has discretion in choosing among specified enforcement actions, which include actions that do not have fiscal consequences.)

We are considering using the following results data<sup>3</sup> in making determinations, including examining a State's progress over time:

1. For Part B, data related to:
  - a. Participation in and proficiency on assessments (reported publicly through either statewide assessments or the National Assessment of Educational Progress) in reading/language arts and math,
  - b. rates of students graduating with a regular diploma and/or
  - c. postschool outcomes.
2. For Part C, data related to:
  - a. early childhood outcomes and/or
  - b. family outcomes.

The third component of RDA is differentiated monitoring and support. In implementing differentiated monitoring and support, OSEP will use results data and other information about a State to determine the appropriate intensity, focus, and nature of the oversight

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<sup>3</sup> The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children. See IDEA section 616(b)(2)(C)(iii). Therefore, OSERS will not use personally identifiable data when making determinations.

and support that each State will receive as part of RDA. In providing differentiated support, OSEP will consider each State's need in relation to the development and implementation of its SSIP.

Context for Responses and Information Requested:

Throughout the process of developing RDA, the Department has both provided information to the public, and sought input from interested stakeholders, consistent with the core principles outlined above. We have sought input from stakeholders in a variety of ways, including:

1. Blog posts on the Department's Web site inviting input from the public on a variety of topics including the Core Principles and one approach for using results data in determinations (<http://www.ed.gov/blog/2012/07/results-driven-accountability-effort/>);

2. Meetings and conference calls with stakeholders, including State personnel, child and family advocacy groups, professional organizations, researchers, and technical assistance providers to solicit input regarding the opportunities and barriers related to shifting to a more results focused monitoring; and

3. Working with the National Center on Educational Outcomes and the Center on Early Childhood Outcomes to

examine options for what results data to consider in making determinations, and how to use those data as part of the determinations process.

The Assistant Secretary for OSERS invites States, local educational agencies (LEAs), early intervention service (EIS) programs and providers, parents, and other stakeholders to provide input on how the Department should use results data, in combination with compliance data, to make determinations under section 616(d)(2) and 642 of the IDEA in 2014 and subsequent years. We are particularly interested in feedback on the following:

1. How should the Department use results data such as assessment data, graduation data and/or postschool outcomes data in making determinations under Part B of the IDEA? For any suggestion, please explain why and how the Department could use the data in a valid, reliable, and equitable manner in making determinations.

2. How should the Department use results data such as early childhood outcomes data and/or family outcomes data in making determinations under Part C of the IDEA? For any suggestion, please explain why and how the Department could use the data in a valid, reliable, and equitable manner in making determinations.



3. Are there any additional or different types of results data, including data on assessments to measure proficiency in reading/language arts and math, or other results data that the Department should/could consider using in the IDEA Part B determinations process? For any suggestion, please explain why and how the Department could use the data in a valid, reliable, and equitable manner in making determinations.

4. Are there any additional or different types of results data that the Department should/could consider using in the IDEA Part C determinations process? For any suggestion, please explain why and how the Department could use the data in a valid, reliable, and equitable manner in making determinations.

To ensure better results for children with disabilities, the Department expects all components of the RDA system to be aligned with States' efforts to improve outcomes for all children with and without disabilities. To meet this goal, we encourage stakeholders to provide suggestions for using results data in a manner that is equitable and transparent. You may provide comments in any convenient format (i.e., bullet points, charts, graphs, paragraphs, etc.) and may also provide relevant information

that is not responsive to a particular question but may nevertheless be helpful.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) upon request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

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PROGRAM AUTHORITY: 20 U.S.C. 1416 and 1442.

Dated: March 20, 2014.

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Michael K. Yudin,  
Acting Assistant Secretary for  
Special Education and  
Rehabilitative Services.

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